DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

McGHEE & CO. *v.* COX et al.

Sept. 7, 1914.

[82 S. E. 701.]

1. Stipulations (§ 14*)—Agreed Case—Effect—Inferences of Fact and Law.—Where a case is heard on an agreed statement of facts, the court may only draw inferences of law and of legal construction and not inferences of fact.

[Ed. Note.—For other cases, see Stipulations, Cent. Dig. §§ 24-37; Dec. Dig. § 14.* 1 Va.-W. Va. Enc. Dig. 285.]

2. Landlord and Tenant (§ 76*)—Lease—Covenant against Assignment—Waiver.—Where a lease was assigned without the consent of the lessor, in violation of a covenant therein, but the lessor, with knowledge of the assignment, thereafter received rents due from the lessee for several months, and until it elected to terminate the lease by giving notice according to its terms, and made no objection to the subletting or assignment, the covenant was waived.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 225-230; Dec. Dig. § 76.* 9 Va.-W. Va. Enc. Dig. 193.]

3. Landlord and Tenant (§ 208*)—Lease—Covenant against Assignment—Breach—Action for Rent—Defenses.—Since a covenant against assignment of a lease without the lessor's consent is for the sole benefit of the lessor and his assigns, a breach of the restriction by the lessee is not available to an assignee of the lease in defense to an action for rent.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 737, 821-831; Dec. Dig. § 208.* 9 Va.-W. Va. Enc. Dig. 194.]

4. Landlord and Tenant (§ 128*)—Lease—Assignment—Possession.—Where, at the time plaintiffs leased certain premises to defendants, plaintiffs were in actual possession of the whole, being owners in fee of a portion and holding over as lessees of the residue, they were not bound to put defendants into actual possession, but it was sufficient that they had the premises open to entry without any obstacle in the form of a superior right to prevent defendants from obtaining actual possession.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 448, 449; Dec. Dig. § 128.* 9 Va.-W. Va. Enc. Dig. 193.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

5. Landlord and Tenant (§ 199½*)—Lease—Assignment—Contract—Breach.—Plaintiffs, being lessees of a quarry on a railroad right of way, assigned the same to defendants, and shortly thereafter the railroad company refused to permit further operations, unless defendants paid the wages of a watchman while work was being done in the quarry. This defendants refused to do, and thereupon ceased operating the quarry, and alleged such fact as a breach of plaintiff's contract in defense of an action for rent. Held, that defendant's rights as to the operation of the quarry, with or without a watchman, depended on the construction of the written contract between plaintiffs and the railroad company, and not on the contention of either party with reference thereto, and hence the railroad company's claim constituted no defense to defendant's liability for rent.

[Ed. Note.—For other cases, see Landlord and Tenant, Dec. Dig. § 199½.* 9 Va.-W. Va. Enc. Dig. 193.]

Error to Law and Chancery Court of City of Roanoke.

Action by one Cox and others against McGhee & Co. Judgment for plaintiffs, and defendant brings error. Affirmed.

Hart & Hart, of Roanoke, for plaintiff in error.

Jackson & Henson, of Roanoke, and J. H. Stuart, of Tazewell, for defendants in error.

NEWBERRY *v.* WATTS.

Sept. 7, 1914.

[82 S. E. 703.]

1. Trial (§ 154*)—Demurrer to Evidence—General Demurrer.—That a demurrer to the evidence was general and did not specifically state the ground on which it was based, as required by Acts 1912, p. 75, c. 42, was not a fatal defect, where there was but one controverted question in the case, which was plainly defined to both parties.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 351, 353; Dec. Dig. § 154.* 4 Va.-W. Va. Enc. Dig. 519, 547.]

2. Assignments (§ 134*)—Payment to Assignor—Notice—Burden of Proof.—On an issue as to the validity of alleged payments made by the obligor of a bond to the obligee after the bond had been assigned, the burden is on the plaintiff to prove that the obligor had notice of the assignment when the payments were made.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. §§ 229-231; Dec. Dig. § 134.* 1 Va.-W. Va. Enc. Dig. 777.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.